

**REMARKS**

The non-final Office Action mailed November 11, 2004 has been reviewed and the Examiner's comments have been considered. Claims 1-6 and 10-11 have been amended. New claims 12-15 have been added. Claims 7-9 have been canceled without prejudice or disclaimer as being drawn to a nonelected method in response to a restriction requirement imposed by the Examiner. The claims pending in this application are 1-6 and 10-15. Reconsideration of all pending claims and allowance is respectfully requested.

**I. Claim Objections and Rejections Under 35 U.S.C. 112**

Dependent claim 2 has been amended to conform the preamble to claim 1 and overcome the Examiner's objection noted on page 2 of the Office Action. Amended claim 2 is believed to be allowable for this and the other reasons noted in Section II below addressing the Examiner's rejection under 35 U.S.C. 102.

Claims 10-11 have been amended to correct the informalities noted by the Examiner on pages 2-4 regarding claiming of groups of materials and overcome the Examiner's objection. Claim 11 has been further amended to overcome the Examiner's §112 rejection noted on page 4 regarding claiming of the frangible material. Claims 10-11 are believed to be allowable for these reasons and the reasons noted in Section II below addressing the Examiner's rejections under 35 U.S.C. 102 .

**II. Claim Rejections Under 35 U.S.C. 102**

Claims 1-3, 5-6, and 10-11 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,911,891 to Bappert ("Bappert"). Claims 3-5 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,861,269 to Laverty ("Laverty"). Claims 1, 3, and 10 are independent. These rejections are addressed in turn below, with initial emphasis on the independent claims.

Independent claim 1 has been amended and now recites a "helical, roughened surface formed on at least part of the shank." Support for this amendment is found in the Applicant's disclosure at least on: page 4, last paragraph; page 5, last paragraph; and in FIG. 1 (see Item 30). As the Applicant's disclosure provides, "roughened surface 30 ... may be characterized by various ridges, scores, bumps, and/or valleys in contrast to the relatively smooth surfaces forming the threads." (Applicant's disclosure, page 5, last paragraph.) This roughened surface is

useful for increasing frictional hold between the frangible material and fastener to aid in resisting pull-out of the fastener from the frangible material. (Applicant's disclosure, page 4, last paragraph.).

To anticipate a claim, each and every element of the claim must be found in a single prior art reference. MPEP 2131 (citing *Verdegaal Bros. v. Union Oil Co. of Calif.*, 814 F.2d 628,631 (Fed. Cir. 1987).

Although Bappert may disclose an uneven surface as noted by the Examiner on page 5 of the Office Action, neither Bappert, nor any of the other references of record alone or in combination for that matter, teach or suggest such a "roughened" surface as now claimed. Accordingly, claim 1 is believed to be allowable. Claim 2, which depends from claim 1 and includes all of its limitations, is believed to be allowable for at least the same reasons as claim 1 and further limitations that distinguish over the references of record.

Independent claim 3 has been amended similarly to claim 1 and also recites a "roughened surface" on the shank. Accordingly, claim 3 is believed to be allowable for at least the same reasons as claim 1 presented above. Claims 4-6 depending directly or indirectly from claim 3 and including all of that claim's limitations, are believed to be allowable for at least the same reason as claims 1 and 3 presented above and further limitations that distinguish over the references of record.

Independent claim 10 has been amended similarly to claims 1 and 3, and now includes a "helical, roughened surface formed on at least part of the shank" Claim 10 is believed to be allowable for at least the same reasons as claims 1 and 3 presented above. Claim 11, depending from claim 10 and including all of that claim's limitations, is believed to be allowable for at least the same reasons as claims 1 and 3 presented above and further limitations that distinguish over the references of record.

### New Claims 12-15

New independent claim 12 is directed to a fastener suitable for holding in frangible material. Similarly to independent claims 1, 3, and 10 as amended and described above, new claim 12 recites "a helical, roughened surface disposed between the thread convolutions on at least part of the shank." Such a roughened surface is not taught or suggested by the references of

record. Accordingly, claim 12 is believed to be allowable for at least the same reasons as claims 1, 3, and 10 presented above.

New claims 13-15 depend directly or indirectly from claim 12 and include all of the limitations of claim 12. Accordingly, claims 13-15 are also believed to be allowable based on the allowability of claim 12 and further limitations that distinguish over the references of record..

Support in the Applicant's disclosure for new claim 12, which is similar to claim 1, is at least the same as discussed for claim 1 above and in the carryover paragraph starting on pages 5 to page 6. Support for new claim 13 and 14 can be found at least on page 5, second full paragraph and in the Figures. Support for new claim 15 can be found at least on page 6, in the paragraph on top of the page. No new matter has been added by these claims.

Considering the invention as a whole, the claimed roughened surface on the shank of the fastener advantageously improves pull-out resistance of the fastener from frangible material, such as a sheet rock wall for example. As noted on page 4 of the Applicant's disclosure, the claimed fastener allows objects to be supported entirely by the fastener itself from the frangible material without assistance from underlying wall support structures such as studs. None of the references of record teach or suggest such a novel fastener surface structure. Accordingly, the pending claims are believed to be in condition for allowance.

In light of the foregoing, Applicant respectfully requests reconsideration and allowance of the pending claims. An early notice to this effect is earnestly solicited. The Examiner is invited to call the undersigned attorney at 212-309-6375 if a telephone call could help resolve any remaining issues and expedite allowance of the application.

Respectfully submitted,

**MORGAN, LEWIS & BOCKIUS LLP**



Dated: January 31, 2005

By:

Frank J. Spanitz  
Reg. No. 47,104

**CUSTOMER NO. 009629**

**MORGAN, LEWIS & BOCKIUS LLP**  
1111 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Tel: 202-739-3000  
Fax: 202-739-3001